

REMARKS

Claims 1-14 and 19-24 are pending in the application after this amendment. In response to the rejection of claims 1-18, claim 9 has been amended, claims 15-18 has been withdrawn, and claims 19-24 have been added. The amendments, cancellation, and/or withdrawal of claims is not to be considered in anyway an indication of applicant's position on the merits of the amended, cancelled, and/or withdrawn claims. In the following sections of the Amendment the rejections set forth by the Examiner in the December 18, 2002, Office action are addressed. These rejections are respectfully traversed, and detailed arguments are set forth below. Reconsideration of the claims is requested in view of the foregoing amendments and the following remarks.

35 U.S.C. §121

The Examiner has indicated that restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 1-14, drawn to a method of preserving plant tissue, classified in class 427, subclass 4.
- II. Claims 15-18, drawn to preserved plant tissue, classified in class 428, subclass 22.

As indicated by the Examiner, a provisional election of claims 1-14 was made with traverse. Applicant herein affirms this election. Claims 15-18 are withdrawn from further consideration as being drawn to a non-elected invention and these claims have now been withdrawn.

35 U.S.C. §112

The Examiner rejected claims 8-10 and 13 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention.

More specifically, the Examiner states that the term "rubber like" in claim 8, step (c), is indefinite because the claim(s) include(s) elements not disclosed. Applicant would like to stipulate that the term "rubber like" can be defined as "flexible and pliable, displaying substantial elasticity, and bending freely under pressure." Accordingly, claim 8, step (c) could be read as "any solution imparting a 'flexible and pliable, displaying substantial elasticity, and bending freely under pressure' flexibility." Applicant would be amenable to amending claim 8 if the Examiner still feels that this is necessary.

The Examiner also states that the use of registered trademarks in claims 9 and 13 renders the claim(s) indefinite. Applicant has also found that Plastic Dip International, the owners of the registered term PLASTI DIP® describes their product as a "multi-purpose rubber coating." Applicant, however, feels that the substitution of this phrase (especially the term "coating") would render the claim confusing as applicant does not use the product for this purpose. Similarly, applicant has found that the registered term PLASTI DIP® is for "Air Dry Plastic Coating for Hand-Held Articles," but feels that the substitution of this phrase would render the claim confusing as applicant does not use the product for this purpose. Applicant notes that MPEP § 2173.05(u) specifically states that "The presence of a trademark or trade name in a claim is not, *per se*, improper under 35 U.S.C. § 112, second paragraph, but the claim should be carefully analyzed to determine how the mark or name is used in the claim." Applicant respectfully submits that the presence in the claim does not cause confusion as to the scope of the claim. Applicant, however, would be amenable to amending the claim if the Examiner could come up with a suitable limitation.

The Examiner also stated that "it is not clear whether claims 8, 9, and 10 are directed to the compositions of the saturation mix, the coating mix, or both." In accordance with the Examiner's interpretation, the claim includes all three of the scenarios set forth by the Examiner (one mix may be used instead of two, both the saturation and coating mixes are the same, or only one is defined by the claim, but the other is still unspecified by the claim).

35 U.S.C. §102 and §103

The Examiner rejected claims 1-14 under 35 U.S.C. §102 and/or 35 U.S.C. §102 as being anticipated by U.S. Patent No. 2,658,836 to Fessenden (the "Fessenden reference") or obviated by the Fessenden reference in combination with U.S. Patent No. 4,272,571 to Romero-Sierra (the "Romero-Sierra reference").

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Applicant specifically is addressing the Examiner's rejection of claims 8 to 10 as being unpatentable under 35 U.S.C. §103(a) over the combined disclosure of the Fessenden reference in view of the Romero-Sierra reference. Applicant traverses the rejection of these claims.

Preliminarily, applicant notes that claims 9 and 10, as amended, depend from claims 19 and 20, which specify option (d) of claim 8. Accordingly, as recognized by the Examiner on page 6 of the Office action, these claims, as amended, necessarily call for a feature not disclosed or suggested in the Fessenden reference, that is a silicone styrene elastomer resin mix. As detailed below, applicant further submits that the disclosure of the Romero-Sierra reference fails to fill in the gaps of the teaching of the Fessenden reference and, accordingly, claims 8 to 10, and new claims 19 and 20, are patentable over the prior art.

The Romero-Sierra reference discloses a composition, and method of use of the composition, for preserving flowers. The composition contains a silicone fluid, such as dimethyl siloxane polymer. See column 4, line 50. The Romero-Sierra composition further contains, as essential components, a carboxylic acid (column 4, lines 4-11), a urea-containing compound (column 4, lines 14-18), and a sodium or other alkaline citrate (column 4, lines 32-35).

The Romero-Sierra reference neither discloses nor suggests the presently claimed silicone styrene elastomer resin mix or claims 8 and 19, nor the copolymers of dimethylsiloxane and polystyrene as claimed in claims 9, 10, and 20.

According to the method of the present invention, including the step of saturating a plant according to claims 8-10 and 19-20, additional components that are

essential according to the Romero-Sierra reference are not required. For example, the method of the invention does not require the use of a carboxylic acid in order to preserve red, pink, or yellow colors. As taught in the Romero-Sierra reference, at column 4, lines 10-11, such carboxylic acid is required in sufficient concentration. "Too low a concentration [of carboxylic acid] causes the colours to appear faded, especially in red flowers."

Also, the method of the present invention does not require the use of a urea-containing compound to prevent loss of pigments from the blooms, as taught in the Romero-Sierra reference at column 4, lines 19-23. "Insufficient thiourea or other urea-containing compound causes the colours to appear dead and lacking in their original fresh beauty, and some colours may even change completely, as for instance a blue orchid may turn a sickly red or pink."

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Also, the method of the present invention does not require the use of a sodium or other alkaline citrate as a color preservative for blue, purple, or orange blooms. As taught in the Romero-Sierra reference at column 4, lines 34-35, "Omission of sodium citrate causes the colours to appear faded."

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The Romero-Sierra reference does not disclose or suggest the use of a saturating solution containing a silicone styrene elastomer resin mix, as called for in the present claims. The method of the invention, including the step of saturating using such mix, preserves flowers, and maintains the colors of flowers, without the need for these additional ingredients. Applicant submits, accordingly, that the inclusion in the claims of the features of a silicone styrene elastomer resin mix and of a copolymer of dimethylsiloxane and polystyrene provides a patentable distinction over the prior art.

For these reasons, applicant respectfully submits that the claims, as amended, patentably distinguish over the combined disclosure of the Fessenden reference and the Romero-Sierra reference or the individual disclosures of these references. Accordingly, the Examiner is requested to withdraw the rejection of claims 8 to 10 on this ground.

Application No. 09/975,698
Amendment dated April 18, 2003
Reply to Office action of December 18, 2002

New independent claim 21 has been added and incorporates subject matter from the original claims. No new matter has been added. For the reasons discussed above pertaining to claims 8 to 10, applicant respectfully suggests that this claim, and claims 22-23 that depend therefrom, are allowable.

New independent claim 24 has been added and incorporates subject matter from the original claims. No new matter has been added. For the reasons discussed above pertaining to claims 8 to 10, applicant respectfully suggests that this claim is allowable.

Reconsideration of the claims is respectfully requested in view of the above amendments and remarks, and early notice of allowance thereof is earnestly solicited.

A Petition for Extension of Time for one month is enclosed herewith.

Please charge Deposit Account No. 50-2115 for any additional fees which may be required.

Respectfully submitted,



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